

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

This document relates to:
Cabell County Commission v.
AmerisourceBergen Drug Corp., et al.
Case No. 17-op-45053-DAP

MDL No. 2804

Hon. Dan Aaron Polster

**DEFENDANT H. D. SMITH, LLC'S WITHDRAWAL
OF PENDING MOTION TO DISMISS**

On or about March 9, 2017, plaintiff Cabell County Commission ("Cabell") filed its initial complaint in this matter in the United States District Court for the Southern District of West Virginia. On August 24, 2017 and September 26, 2017, Defendant H. D. Smith, LLC filed a motion to dismiss (Doc. No. 89) and an amended motion to dismiss (Doc. No. 100), respectively.

After transfer to the MDL, Cabell filed a First Amended Complaint on April 25, 2018, and a Second Amended Complaint ("SAC") on or about May 30, 2018. Pursuant to Case Management Order 1 ("CMO 1"), various Defendants filed motions to dismiss the SAC on or about June 8, 2018. *See, e.g.*, Doc. No. 575.

On or about June 13, 2019, Cabell and the City of Huntington filed a Joint and Third Amended Complaint, adding a new plaintiff, new defendants and more than 500 paragraphs of additional allegations. *See* Doc. No. 1682.

In a submission dated November 13, 2019, the Plaintiffs' Executive Committee ("PEC") requested that the Court "promptly decide[]" Defendants' motions to dismiss Cabell's SAC. *See*

Doc. No. 2935, at 8. The PEC's request was puzzling, given that the filing of the TAC mooted prior motions to dismiss Cabell's prior complaints, including the SAC.

In light of Plaintiffs' submission, and for the avoidance of doubt, H. D. Smith hereby withdraws its prior motion to dismiss Cabell's initial complaint, at Doc. Nos. 89 and 100 (as amended). H. D. Smith does so without prejudice to its right to answer or otherwise respond to the TAC, if necessary, for the "Track 2" cases. *See, e.g.*, CMO 1 ¶ 2.j.

Dated: November 22, 2019

Respectfully submitted,

/s/ William E. Padgett
William E. Padgett (IN No. 18819-49)
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, IN 46204
Telephone: (317) 236-1313
Facsimile: (317) 231-7433
Email: william.padgett@btlaw.com

Counsel for Defendant H. D. Smith, LLC

CERTIFICATE OF SERVICE

I, William E. Padgett, hereby certify that the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ William E. Padgett

William E. Padgett

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